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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

RYAN E., an individual

Plaintiff,

vs.

ENTERTAINMENT INDUSTRY FLEX
PLAN; ANTHEM BLUE CROSS LIFE
AND HEALTH INSURANCE
COMPANY,

Defendants.

Case No.: 2:18-cv-03646-MWF (ASx)

PROTECTIVE ORDER

Magistrate Judge Alka Sagar

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

GOOD CAUSE STATEMENT: This is an ERISA action in which Plaintiff Ryan E. (“Ryan E.”) challenges Defendant Entertainment Industry Flex Plan’s (the “Flex Plan”) denial of certain medical benefits for his dependent son on medical necessity grounds. Following remand from the Ninth Circuit, the Court has reopened discovery to enable the parties to clarify the record on three issues related to the relationship between Anthem Blue Cross Health & Life Insurance Company (“Anthem”) and Anthem UM Services, Inc. (“Anthem UM”), which entity made the benefits determination, and the expectation of the parties as to responsibilities of the various entities. The discovery requests that Ryan E has propounded to the Flex Plan related to the same implicate commercial, financial, trade secret, and/or proprietary business information of Anthem and Anthem UM for which special protection from public disclosure and from use for any purpose other than prosecution of this action is warranted. This includes, but is not limited to, non-public confidential policies and

1 procedures, business proposals, and internal agreements/contracts. These documents
 2 show Anthem's internal claims handling process and pricing. Anthem considers this
 3 material competitively sensitive and the Flex Plan has a contractual obligation to
 4 Anthem preserve their confidentiality and shield them from unnecessary public
 5 disclosure. Accordingly, to expedite the flow of information, to facilitate the prompt
 6 resolution of disputes over confidentiality of discovery materials, to adequately
 7 protect information the parties are entitled to keep confidential, to ensure that the
 8 parties are permitted reasonable necessary uses of such material in preparation for and
 9 in the conduct of trial, to address their handling at the end of the litigation, and serve
 10 the ends of justice, a protective order for such information is justified in this matter. It
 11 is the intent of the parties that information will not be designated as confidential for
 12 tactical reasons and that nothing be so designated without a good faith belief that it
 13 has been maintained in a confidential non-public manner, and there is good cause why
 14 it should not be part of the public record of this case.

15 16 **2. DEFINITIONS**

17 2.1 Action: This pending federal lawsuit: *Ryan E. v. Entertainment Industry*
 18 *Flex Plan, et al.*, Case No. 2:18-cv-03646-MWF (ASx).

19 2.2 Challenging Party: a Party or Non-Party that challenges the designation
 20 of information or items under this Order.

21 2.3 "CONFIDENTIAL" Information or Items: information (regardless of
 22 how it is generated, stored or maintained) or tangible things that qualify for protection
 23 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
 24 Cause Statement.

25 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
 26 support staff).

1 2.5 Designating Party: a Party or Non-Party that designates information or
2 items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL.”

4 2.6 Disclosure or Discovery Material: all items or information, regardless of
5 the medium or manner in which it is generated, stored, or maintained (including,
6 among other things, testimony, transcripts, and tangible things), that are produced or
7 generated in disclosures or responses to discovery in this matter.

8 2.7 Expert: a person with specialized knowledge or experience in a matter
9 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
10 expert witness or as a consultant in this Action.

11 2.8 House Counsel: attorneys who are employees of a party to this Action.
12 House Counsel does not include Outside Counsel of Record or any other outside
13 counsel.

14 2.9 Non-Party: any natural person, partnership, corporation, association, or
15 other legal entity not named as a Party to this action.

16 2.10 Counsel of Record: attorneys who are not employees of a party to this
17 Action but are retained to represent or advise a party to this Action and have appeared
18 in this Action on behalf of that party or are affiliated with a law firm which has
19 appeared on behalf of that party, and includes support staff.

20 2.11 Party: any party to this Action, including all of its officers, directors,
21 employees, consultants, retained experts, and Outside Counsel of Record (and their
22 support staffs).

23 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
24 Discovery Material in this Action.

25 2.13 Professional Vendors: persons or entities that provide litigation support
26 services (e.g., photocopying, videotaping, translating, preparing exhibits or
27 demonstrations, and organizing, storing, or retrieving data in any form or medium)
28 and their employees and subcontractors.

1 2.14 Protected Material: any Disclosure or Discovery Material that is
2 designated as “CONFIDENTIAL.”

3 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
4 from a Producing Party.

5
6 **3. SCOPE**

7 The protections conferred by this Stipulation and Order cover not only
8 Protected Material (as defined above), but also (1) any information copied or extracted
9 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
10 Protected Material; and (3) any testimony, conversations, or presentations by Parties
11 or their Counsel that might reveal Protected Material.

12 Any use of Protected Material at trial shall be governed by the orders of the trial
13 judge. This Order does not govern the use of Protected Material at trial or at any
14 judicial hearing.

15
16 **4. DURATION**

17 Even after final disposition of this litigation, the confidentiality obligations
18 imposed by this Order shall remain in effect until a Designating Party agrees
19 otherwise in writing or a court order otherwise directs. Final disposition shall be
20 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
21 or without prejudice; and (2) final judgment herein after the completion and
22 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
23 including the time limits for filing any motions or applications for extension of time
24 pursuant to applicable law.

25
26 **5. DESIGNATING PROTECTED MATERIAL**

27 5.1 Exercise of Restraint and Care in Designating Material for Protection.

28 Each Party or Non-Party that designates information or items for protection under this

1 Order must take care to limit any such designation to specific material that qualifies
2 under the appropriate standards. The Designating Party must designate for protection
3 only those parts of material, documents, items, or oral or written communications that
4 qualify so that other portions of the material, documents, items, or communications
5 for which protection is not warranted are not swept unjustifiably within the ambit of
6 this Order.

7 Mass, indiscriminate, or routinized designations are prohibited. Designations
8 that are shown to be clearly unjustified or that have been made for an improper
9 purpose (e.g., to unnecessarily encumber the case development process or to impose
10 unnecessary expenses and burdens on other parties) may expose the Designating Party
11 to sanctions.

12 If it comes to a Designating Party's attention that information or items that it
13 designated for protection do not qualify for protection, Designating Party must
14 promptly notify all other Parties that it is withdrawing the inapplicable designation.

15 5.2 Manner and Timing of Designations. Except as otherwise provided in
16 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
17 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
18 under this Order must be clearly so designated before the material is disclosed or
19 produced.

20 Designation in conformity with this Order requires:

- 21 **a.** For information in documentary form (e.g., paper or electronic
22 documents, but excluding transcripts of depositions or other pretrial or
23 trial proceedings), that the Producing Party affix at a minimum, the
24 legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to
25 each page that contains protected material. If only a portion or portions of
26 the material on a page qualifies for protection, the Producing Party also
27 must clearly identify the protected portion(s) (e.g., by making appropriate
28 markings in the margins).

1 A Party or Non-Party that makes original documents available for inspection
 2 need not designate them for protection until after the inspecting Party has indicated
 3 which documents it would like copied and produced. During the inspection and before
 4 the designation, all of the material made available for inspection shall be deemed
 5 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
 6 copied and produced, the Producing Party must determine which documents, or
 7 portions thereof, qualify for protection under this Order. Then, before producing the
 8 specified documents, the Producing Party must affix the “CONFIDENTIAL legend”
 9 to each page that contains Protected Material. If only a portion or portions of the
 10 material on a page qualifies for protection, the Producing Party also must clearly
 11 identify the protected portion(s) (e.g., by making appropriate markings in the
 12 margins).

13 **b.** for testimony given in depositions that the Designating Party identify the
 14 Disclosure or Discovery Material on the record, before the close of the
 15 deposition all protected testimony.

16 **c.** for information produced in some form other than documentary and for
 17 any other tangible items, that the Producing Party affix in a prominent
 18 place on the exterior of the container or containers in which the
 19 information is stored the legend “CONFIDENTIAL.” If only a portion or
 20 portions of the information warrants protection, the Producing Party, to
 21 the extent practicable, shall identify the protected portion(s).

22 **5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent
 23 failure to designate qualified information or items does not, standing alone, waive the
 24 Designating Party’s right to secure protection under this Order for such material.
 25 Upon timely correction of a designation, the Receiving Party must make reasonable
 26 efforts to assure that the material is treated in accordance with the provisions of this
 27 Order.

1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time that is consistent with the Court's
4 Scheduling Order.

5 6.2 Meet and Confer. The Challenging Party shall initiate the informal
6 dispute resolution process set forth in the Court's Procedures and Schedules. see
7 <http://www.cacd.uscourts.gov/honorable-alka-sagar>

8 6.3 The burden of persuasion in any such challenge proceeding shall be on
9 the Designating Party. Frivolous challenges, and those made for an improper purpose
10 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
11 expose the Challenging Party to sanctions. Unless the Designating Party has waived or
12 withdrawn the confidentiality designation, all parties shall continue to afford the
13 material in question the level of protection to which it is entitled under the Producing
14 Party's designation until the Court rules on the challenge.

15
16 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

17 7.1 Basic Principles. A Receiving Party may use Protected Material that is
18 disclosed or produced by another Party or by a Non-Party in connection with this
19 Action only for prosecuting, defending, or attempting to settle this Action. Such
20 Protected Material may be disclosed only to the categories of persons and under the
21 conditions described in this Order. When the Action has been terminated, a Receiving
22 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

23 Protected Material must be stored and maintained by a Receiving Party at a
24 location and in a secure manner that ensures that access is limited to the persons
25 authorized under this Order.

26 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
27 otherwise ordered by the court or permitted in writing by the Designating Party, a
28

1 Receiving Party may disclose any information or item designated “CONFIDENTIAL”
2 only to:

- 3 a. the Receiving Party’s Counsel of Record in this Action, as well as
4 employees of said Counsel of Record to whom it is reasonably necessary
5 to disclose the information for this Action;
- 6 b. the officers, directors, and employees (including House Counsel) of the
7 Receiving Party to whom disclosure is reasonably necessary for this
8 Action;
- 9 c. Experts (as defined in this Order) of the Receiving Party to whom
10 disclosure is reasonably necessary for this Action and who have signed
11 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 12 d. the court and its personnel;
- 13 e. court reporters and their staff;
- 14 f. professional jury or trial consultants, mock jurors, and Professional
15 Vendors to whom disclosure is reasonably necessary for this Action and
16 who have signed the “Acknowledgment and Agreement to Be Bound”
17 (Exhibit A);
- 18 g. the author or recipient of a document containing the information or a
19 custodian or other person who otherwise possessed or knew the
20 information;
- 21 h. during their depositions, witnesses, and attorneys for witnesses, in the
22 Action to whom disclosure is reasonably necessary provided: (1) the
23 deposing party requests that the witness sign the form attached as Exhibit
24 A hereto; and (2) they will not be permitted to keep any confidential
25 information unless they sign the “Acknowledgment and Agreement to Be
26 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or
27 ordered by the court. Pages of transcribed deposition testimony or
28 exhibits to depositions that reveal Protected Material may be separately

bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

i. any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

- a. promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;
- b. promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and
- c. cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

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2 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
3 **PRODUCED IN THIS LITIGATION**

4 a. The terms of this Order are applicable to information produced by a Non-
5 Party in this Action and designated as “CONFIDENTIAL.” Such
6 information produced by Non-Parties in connection with this litigation is
7 protected by the remedies and relief provided by this Order. Nothing in
8 these provisions should be construed as prohibiting a Non-Party from
9 seeking additional protections.

10 b. In the event that a Party is required, by a valid discovery request, to
11 produce a Non-Party’s confidential information in its possession, and the
12 Party is subject to an agreement with the Non-Party not to produce the
13 Non-Party’s confidential information, then the Party shall:

14 (1) promptly notify in writing the Requesting Party and the Non-Party
15 that some or all of the information requested is subject to a
16 confidentiality agreement with a Non-Party;

17 (2) promptly provide the Non-Party with a copy of the Stipulated
18 Protective Order in this Action, the relevant discovery request(s),
19 and a reasonably specific description of the information requested;
20 and

21 (3) make the information requested available for inspection by the
22 Non-Party, if requested.

23 c. If the Non-Party fails to seek a protective order from this court within 14
24 days of receiving the notice and accompanying information, the
25 Receiving Party may produce the Non-Party’s confidential information
26 responsive to the discovery request. If the Non-Party timely seeks a
27 protective order, the Receiving Party shall not produce any information
28 in its possession or control that is subject to the confidentiality agreement

1 with the Non-Party before a determination by the court. Absent a court
2 order to the contrary, the Non-Party shall bear the burden and expense of
3 seeking protection in this court of its Protected Material.
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5 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

6 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
7 Protected Material to any person or in any circumstance not authorized under this
8 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
9 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
10 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
11 persons to whom unauthorized disclosures were made of all the terms of this Order,
12 and (d) request such person or persons to execute the “Acknowledgment and
13 Agreement to Be Bound” that is attached hereto as Exhibit A.
14

15 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
16 **PROTECTED MATERIAL**

17 When a Producing Party gives notice to Receiving Parties that certain
18 inadvertently produced material is subject to a claim of privilege or other protection,
19 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
20 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
21 may be established in an e-discovery order that provides for production without prior
22 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
23 parties reach an agreement on the effect of disclosure of a communication or
24 information covered by the attorney-client privilege or work product protection, the
25 parties may incorporate their agreement in the stipulated protective order submitted to
26 the court.
27
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1 **12. MISCELLANEOUS**

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
3 person to seek its modification by the Court in the future.

4 12.2 Right to Assert Other Objections. By stipulating to the entry of this
5 Protective Order no Party waives any right it otherwise would have to object to
6 disclosing or producing any information or item on any ground not addressed in this
7 Stipulated Protective Order. Similarly, no Party waives any right to object on any
8 ground to use in evidence of any of the material covered by this Protective Order.

9 12.3 Filing Protected Material. A Party that seeks to file under seal any
10 Protected Material must comply with Civil Local Rule 79-5. This Stipulated
11 Protective Order does not contain any further provisions dealing with the sealing of
12 confidential documents. Parties will need to seek resolution of any issues between
13 each other or seek the Court's guidance on any disputes.

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16 **13. FINAL DISPOSITION**

17 After the final disposition of this Action, as defined in paragraph 4, within 60
18 days of a written request by the Designating Party, each Receiving Party must return
19 all Protected Material to the Producing Party or destroy such material. As used in this
20 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
21 summaries, and any other format reproducing or capturing any of the Protected
22 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
23 must submit a written certification to the Producing Party (and, if not the same person
24 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
25 category, where appropriate) all the Protected Material that was returned or destroyed
26 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
27 compilations, summaries or any other format reproducing or capturing any of the
28 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an

1 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
2 legal memoranda, correspondence, deposition and trial exhibits, expert reports,
3 attorney work product, and consultant and expert work product, even if such materials
4 contain Protected Material. Any such archival copies that contain or constitute
5 Protected Material remain subject to this Protective Order as set forth in Section 4
6 (DURATION).

7
8 **14. VIOLATION**

9 Any violation of this Order may be punished by any and all appropriate
10 measures including, without limitation, contempt proceedings and/or monetary
11 sanctions.

12
13 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

14
15 DATED: March 16, 2021

REED SMITH LLP

16
17
18 By /s/ Kasey J. Curtis
Kasey J. Curtis
19 Attorneys for Defendant Entertainment
Industry Flex Plan

20
21 DATED: March 16, 2021

THE LAW OFFICES OF RUSSELL G. PETTI

22
23 By /s/ Russel G. Petti
24 Russel G. Petti
Attorneys for Plaintiff Ryan E.

1 *Filer's Attestation: Kasey J. Curtis hereby attests that all other signatories listed, and*
2 *on whose behalf the filing is submitted, concur in the filing's content and have*
3 *authorized the filing.*

4
5 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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8 DATED: March 17, 2021

By _____ / s / Sagar

9 Honorable Alka Sagar
10 United States Magistrate Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____[print or type full name], of [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of *Ryan E. v. Entertainment Industry Flex Plan, et al.*, Case No. 2:18-cv-03646-MWF (ASx). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [print or type full name] of _____[print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____